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THE OFFICE OF TRADE OMBUDSMAN

Summary

Since the government of Japan established the Office of Trade Ombudsman (OTO) in January 1982, the office's importance has been gradually strengthened, first in May 1982 and again in January 1983. Progress reports by the government show a rise in the number of cases submitted to the ombudsman's office and give some indication of its effectiveness in resolving problems related to import standards and certification procedures. Because of persistent complaints that market access is still a problem, however, the government has decided to strengthen the system by establishing an OTO Advisory Council, and is pressing for further liberalization of import-distorting procedures. This report will discuss the role, organization and controversy surrounding the OTO.

Background

In January 1982, the government of Japan, pressed by its trading partners to come up with a proposal to address the complaints of overseas exporters, set up the Office of Trade Ombudsman (OTO). The trade-related ministries and agencies were directed to identify internal channels for processing grievances and to take the necessary institutional steps to ensure that the procedure was effective. Communication and coordination were the responsibility of a deputy chief Cabinet secretary and a staff of vice ministers from appropriate agencies. A bureau of the Economic Planning Agency (EPA) was designated to serve as OTO's secretariat, and OTO reception offices were opened in the major government ministries.

Former Prime Minister Zenko Suzuki, a strong supporter of the move, made his position clear in a statement stressing the importance of the OTO in the market-access package announcement of January 1982. He noted that as an international contribution

to the maintenance of the free trading system, Japan was willing to uniliterally reduce tariffs and establish an ombudsman's office to deal with international trade disputes. Again in the second market-access package of May 1982, the importance of the office was emphasized. Government officials said the OTO had been working to advance access and had already been instrumental in a total of 86 cases. The office would, they said, continue to explore ways to make more comprehensive use of the procedure in cooperation with various private foreign organizations in Japan. In addition, in January 1983, the government took the unusual action of strengthening the functions of the OTO, including establishing an advisory board and permitting a system under which complaints could be filed by proxy. Such signs of a more aggressive stance have been welcomed by all the parties in the trade arena.

Grievance Procedures

The headquarters office of the agency functions as a clearinghouse for incoming inquiries and complaints of all sorts. While these are simultaneously filed with the relevant department, OTO maintains contact with the foreign companies regarding the status of their problem. Procedures require prompt discussion of changes to correct working-level grievances.

Each of the 11 trade-related ministries and agencies accepts and processes incoming complaints. As noted above, a recent innovation permits a grievance to be filed by proxy so that a company need not be physically in Japan to take advantage of the service. The offices of OTO inform the complainant of the status of his case within ten days and monthly thereafter until a final determination is made. And when a finding is conveyed to the complainant, the reasons for the determination are clearly stated.

In processing grievances, the following guidelines are followed:

1. Conformity with International Standards — In setting and revising standards based on various domestic laws and regulations, an effort is made to see that they conform to international standards as much as possible.

2. Acceptance of Foreign Test Results — Where there is sufficient reason to believe that the results of tests in foreign countries fulfill Japanese standards, foreign test data will be accepted.

3. Clarification and Quantification of Standards — Where foreign firms feel Japanese standards are unclear or confusing, efforts will be made to clarify them.

4. Simplification of Testing Procedures — The amount of documentation required will be reduced to shorten the time required for import inspection and eliminate delays caused by minor points.

5. "Transparency" — Prior notification of regulations will be made to afford broader opportunities for exporters to submit comments about amending the standards. Information on laws and regulations will be available in English-language translations, as will procedural manuals.

To insure fast settlements, ministry officials must report to the OTO weekly on the disposition of incoming grievances. If the complaint is not received by the agency which has jurisdiction over the problem, OTO will decide what agency is responsible on the day

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the complaint is made. Complaints may also be filed with the Japanese embassy in the United States and the offices of the consulates-general, as well as the Japan Trade Centers.

Complaints Received: Ninety-nine complaints were filed from January 1982 to February 1983 (see Table 1). Of these, 33 were from Japanese businesses and 66 from non-Japanese, half of them from the United States (see Table 2). As shown in Table 3, complaints from overseas exporters have been increasing, particularly from the United States (46) and the European Community (29). The most numerous complaints have been directed to the Ministry of Health and Welfare, which examines pharmaceuticals and food sanitation, the Ministry of Finance (tariff classifications), the Ministry of International Trade and Industry (regulations on high-pressure gases) and the Ministry of Agriculture, Forestry and Fisheries (animal quarantine and plant quarantine) (see Table 5).

Complaints Processed: Eighty-seven complaints have been processed since the establishment of the OTO. Of those received by February 1983, six had not been completely resolved by that time, five were under study and one was being classified (Table 6). Of those completed, 21 were resolved through institutional improvements, 46 were dismissed as misunderstandings, and were accepted without further protest (Table 7).

Examples of Complaints

- A complaint was received from a U.S. firm that carpet stain removers were prohibited in Japan because the container's strength was less than the regulated limit under the High Pressure Gas Control Law. The ministry reviewed the standards for the aerosol containers and agreed to an alteration.

- A Japanese honey importer asked for a ruling on the product, which was approved by certificates issued by the government of the exporting country. The firm objected to the examination for residual antibiotics under the Food Sanitation Law. The Ministry of Health instructed every Food Sanitation Inspectors' Office that no examination was necessary if the item was accompanied by government documentation.

- An exception to the regulations concerning imported bees was filed by a Japanese firm, which proposed that local quarantine certificates should be allowed to substitute for the federal ones. The Ministry of Agriculture agreed that where no federal facilities for quarantine exist, the state is permitted to certify the bees as disease-free.

- In another case, a Japanese firm argued that duties for merchandise returned after the six-month import permit date should be refunded. The Finance Ministry ordered an extension.

Still other cases involved a misunderstanding of laws and regulations.

- In a decision involving MITI's chemical substance law, a U.S. firm felt that if it revealed the composition of a chemical reagent to Japanese customs agents, it would expose the firm's products to competing manufacturers. Two specific methods of maintaining confidentiality apply to this procedure, it was explained, and in any case, information concerning composition is not required for customs clearance.

- A U.S. firm said that it had trouble obtaining import certificates for medical equipment under the Pharmaceutical Affairs Law. The Health Ministry explained that no import license was necessary for importing equipment for testing and research purposes.

• Relief from regulations controlling new stores affiliated with foreign firms was a problem for another company. MITI, which handles retail business operations, explained that the law limits new stores above a minimum floor space that might compete against those already in business, but this regulation applies equally to Japanese and foreign concerns.

There is little doubt that this approach represents something of an improvement on the trade scene, but Commerce official Clyde V. Prestowitz, commenting in the Japan Economic Survey of December 14, 1982, was critical. He said that the OTO has been largely ineffective, and complained that it functions more or less as a mailbox. The OTO merely passes complaints on to the ministry, he said, which in all likelihood will send back a negative response. And Clyde McAvoy, the director of Continental/Air Micronesia Airlines in Japan quotes a government official as saying: "I have been asked by the ombudsman to explain to you why your request has been refused."

Mr. Prestowitz argues that in another instance, the Health Ministry (MHW) had changed the health standards for soft-drink dispensers after a particular company had been selling its dispensers in Japan for ten years. The OTO directed the inquiry to officials of the MHW. Two versions of the result are current. In one the agency reportedly said it would not change the standards. In the other, the OTO report on the grievance is said to have concluded that there was "no proof that the regulation discriminated against the imported product. Moreover, the product was determined to be exempt from the standards after investigation. The complainant was satisfied with the explanation."

While there is no way of knowing which story is true, there are some who are dissatisfied with the OTO in the United States. American government and business officials have made the central issue the organization's ability to solve problems, while in Japan the ombudsman is seen as an avenue for investigating complaints, reporting findings and serving as a clearinghouse for inquiries or complaints. This confusion over assumptions has contributed to the growing frustration.

Even Japanese businesses complain about trade-related regulations and Keidanren has been investigating areas where the reform of import procedures is essential from the standpoint of private-sector business activity. It has been pushing the government to adopt additional measures to simplify and streamline its trade-related regulatory functions. Keidanren has suggested eight areas for improvement, including stronger authority to settle complaints. In particular, it feels that foreign and Japanese firms fear retaliation by related ministries or agencies if the company complains to the OTO. Keidanren officials recommend that a procedure that insures confidentiality be tried.

Japanese Government Response

At the beginning of the year, the Nakasone government concluded that it would strengthen the review procedure by setting up an OTO Advisory Council chaired by former State Minister for External Economic Affairs Nobuhiko Ushiba. Tokyo has said that this will strengthen the office's functions by linking the operational level with senior government personnel. In commenting on the policy, the president of the American Chamber of Commerce in Japan, Lawrence F. Snowdon, said that the advisory council was evidence of the government's commitment to directly affect the elimination of trade barriers.

At the same time, OTO's liaison and coordinating functions were reinforced by appointing to the secretariat personnel whose sole responsibility was the OTO. Similarly,

each ministry or agency was asked to designate personnel to handle only ombudsman business, in order to speed the processing of complaints and assure full implementation of the recommended improvements. Other changes were made to improve standards and certification procedures and revise and amend the various laws that operate as barriers to trade.

The government-approved package, drawn up after two months of study and lengthy inter-ministerial negotiations, covers laws on pharmaceutical products, agricultural chemicals, forestry products, consumer product safety, consumer appliances and automobiles. The package ensures non-discrimination between nationals and non-nationals, provides transparency — as noted above — and allows parties concerned, including foreign nationals, to testify during the standards-drafting process. It commits Japan to (a) international standards where they already exist, or to the establishment of new standards, (b) the acceptance of foreign test data except where compelling reasons exist not to do so, (c) the simplification of procedures with respect to motor vehicles, pharmaceuticals, medical devices, electric appliances and animal and plant quarantine, and (d) the improvement of pre-import procedures. The government plans to submit these revisions to the current Diet session for approval and is ready to implement administratively those market-opening measures which require no legal revisions.

United States Trade Representative (USTR) William Brock has expressed confidence that the Diet will respond quickly. If these adjustments are effective and access is indeed eased, the role of the OTO will be reduced. But the combination of foreign expectations and domestic bureaucratic inertia might complicate matters. For example, USTR officials suggested in the meeting on import standards and certification procedures recently that changes should include self-certification by foreign manufacturers on compliance with automobile safety requirements. The government agreed to allow foreign automakers to obtain the necessary type designation by shipping one sample vehicle with related documents. As a result, the time required for clearance will be reduced from about seven months to about 2.5 months. Nonetheless, although the Japanese government can legitimately point to its willingness to eliminate nontariff barriers as evidenced by its response to this request, there is still the question of whether these moves will satisfy U.S. government officials and exporters, who contend that there is still an array of trade-restrictive practices available if the Japanese want to use them.

For further information, contact Yoshio Nakamura.

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Number of Cases

Table 1: Complaints Received

February-October 1982	75
November 1982	9
December 1982	4
January 1983	6
February 1983	5
Total	99

Table 2: Origin of Complaints (February 1983)

Japan	33
Overseas	66
U.S.A.	33
EC	20
Total	99

Table 3: Country of Origin of Product Involved (February 1983)

U.S.A.	46
EC	29
Others	16
Unspecified	8
Total	99

Table 4: Ministry or Agency Accepting Complaints

Economic Planning Agency	40
Ministry of International Trade and Industry	34
JETRO	19
Ministry of Foreign Affairs	19
Ministry of Finance	3
Ministry of Posts and Telecommunications	2
Ministry of Health and Welfare	1
Total	99

Table 5: Jurisdiction Over Items Involved

Ministry of Health and Welfare	34
Ministry of Finance	27
Ministry of International Trade and Industry	23
Ministry of Agriculture, Forestry and Fisheries	8
Ministry of Posts and Telecommunications	4
Ministry of Transport	3
Ministry of Education	2

Table 6: Disposition of Complaints

Completed	87
Under Process*	6
No Decision	5
Being Clarified**	1
Total	99

Notes:

* The ministry or agency has completed its study and is in the process of conveying these results to the complainant.

** The facts of the matter are being confirmed with the complainant and/or the ministry or agency involved and/or are in the testing process.

Table 7: Detail on Cases Completed

Improvements in Regulations	21
Misunderstandings	46
Further Study	0
Situation Unchanged	20
Total	87

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